

DRAFT
ANTIDEGRADATION STAKEHOLDERS' MEETING SUMMARY

Date: June 25, 2008
Time: 10:00 A.M. – 4:00 P.M.
Location: Fort Benjamin Harrison State Park, Garrison, North Ballroom

Present at the meeting:

Brett Barber (Greeley & Hansen), David Bates (City of Goshen), Dave Behrens (US Steel), Bill Beranek (Indiana Environmental Institute), Douglas Bley (Arcelor Mittal), Kevin Doyle (Arcelor Mittal), Albert Ettinger (ELPC), Kari Evans (Barnes & Thornburg and Indiana Water Quality Coalition), Pam Fisher (Indiana Economic Development Commission), Lori Gates (Christopher Burke Engineering), Vince Griffin (Indiana State Chamber of Commerce), Rose Herrera (BP Products), Nysa Hogue (Indianapolis Power & Light), John Humes (Hoosier Energy), Jeff Hyman (Conservation Law Center), Larry Kane (Bingham McHale), Brandon Koltz (Symbiont), Don Larson (Commonwealth Engineers, Inc. And Indiana Water Environment Association-Government Affairs), Jhani Laupus (JLL Associates), Howard Lewis (Duke Energy), Tim Lohner (American Electric Power), Tim Maloney (Hoosier Environmental Council), Kathy Mayo (EPA Region 5), Maggie McShane (Indiana Petroleum Council), Kay Nelson (Northwest Indiana Forum), Michael O'Brien (US Steel), Don Olson (City of Michigan City), Neil Parke (Eli Lilly & Company), Dave Pfeifer (EPA Region 5), Dan Plath (NiSource), Gary Powdrill (WPCB), Pedro Stiassni (Alcoa, Warrick), Bowden Quinn (Sierra Club), Dave Wagner (WPCB), Brandi Wallace (City of Fort Wayne), Denny Wene (Alcoa), Craig Williams (City of Angola).

Representing IDEM: Tom Easterly, Bruno Pigott, Martha Clark Mettler, Steve Roush, Dennis Clark, Shivi Selvaratnam, John Nixon, Larry Wu, and MaryAnn Stevens.

COMMISSIONER'S OVERVIEW

Tom Easterly, IDEM Commissioner, began the meeting with a discussion of how to proceed with the antidegradation rulemaking process. The commissioner's suggested idea is to convene smaller drafting groups to work on rule issues that would be determined in today's meeting. The smaller group would meet on each issue, holding one meeting every other week until all issues are considered by the group. IDEM will determine the outcome for issues unresolved by the small group sessions.

The stakeholders wanted to consider the suggested process. One comment concerned the limited time between small group meetings for the participants to provide information from the small group sessions to those they represent.

Martha Clark Mettler's Presentation of Rule Changes

Martha Clark Mettler, IDEM, Office of Water Quality, Deputy Assistant Commissioner, gave a presentation on changes to the antidegradation draft rule that have occurred between the previous version dated March 14, 2008, and the current (June 5, 2008) version. Martha asked that comments be limited to rule organization and structure, which were the main goals in preparing the June 5th draft rule.

- Section 1, Applicability: The intention of the changes was to clarify that reasonable potential to exceed (RPE), both numeric and narrative, is the trigger to antidegradation implementation procedures.

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- Section 2, Definitions: Changes to definitions were made to add clarity. IDEM is open to suggestions regarding definitions and to adding other terms to be defined. Existing statutory definitions, where available, were used for terms in Section 2.
- Section 3, Antidegradation standards: Martha is fairly comfortable that people who have been involved in antidegradation discussions over the long term understand the stated standards.
 - Kari Evans asked if IDEM's intention is to apply antidegradation standards to the entirety of a tributary to an OSRW. Martha replied that, with regard to a tributary, the area of impact and the type of pollutant had to be considered and that IDEM's intention is not to apply the antideg standards to the entire tributary.
- Section 4, Activities exempt from the antidegradation demonstration requirements because they do not constitute a significant lowering of water quality (AKA: Nonsignificant lowering): Most of the changes made in the June 5th version occurred in this section based on reaction at the April 29th stakeholders' meeting and the suggestion not to use nonintuitive language. Martha contacted EPA regarding the choice of "exemption" to name the activities not having to meet the antidegradation demonstration requirements. A task for the smaller workgroup is to work on the list of exemptions and what to do about persistent pollutants such as mercury.
 - Albert Ettinger questioned the removal of mass from the requirement at 327 IAC 4(b)(3). Martha acknowledged it was a mistake.
 - Kari Evans asked for clarification of IDEM's consideration of de minimis with regard to alternate mixing zones. Martha deferred to Steve Roush's presentation later in the meeting. De minimis consideration was moved into section 4 due to comments from the April 29th meeting, but Martha still thinks it may not be the most appropriate location in the rule.
- Section 5, Exemption justification: The changes allow for no separate public notice of the exemption justification—it can be submitted with the permit application and could be reviewed with the permit. Martha acknowledged already receiving comments on this change.
- Section 6, Antidegradation demonstration application: The requirements parallel what the commissioner must review. There is a separate public notice requirement because there is a separate review by the commissioner.
- Section 7, Commissioner's determination on antidegradation demonstration application: Refers back to section 6 for the review factors rather than repeat them.
- Section 8, Water quality improvement project application: Information in this application is required for a discharger implementing a project as well as for one paying the fee.
 - Doug Bley commented that there is a conflict with legislation when paying a fee.
 - Martha stated IDEM needs feed back from an applicant to show how a water quality improvement project would offset pollutants.
- 327 IAC 5-2-11.2: Requirement for a separate public notice of exempt activities has been eliminated.

Steve Roush's Presentation on Examples of Antidegradation Review

Steve Roush, presented examples of the trigger for an antidegradation demonstration and the Effluent Limits based on the De minimis Lowering of Water Quality for new and existing industrial and sanitary dischargers to the Great Lakes Basin or to an OSRW or an EUW. Many stakeholders found it difficult to understand the basis for the examples being provided in a tabular form similar to the ones found in NPDES permits. Steve explained the process and

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applicable rules verbally, but the example sheets did not contain an explanation of the rules and process used to develop the examples permit limits. Steve agreed to provide the stakeholders with the spread sheet containing the calculations from which he arrived at the numbers/limits shown on the antidegradation examples presentation.

Some of the basic underlying concepts for the antidegradation examples include the following:

1. If the discharger's projected effluent quality (PEQ) exceeds the preliminary effluent limit (PEL) for a pollutant parameter, then there is a reasonable potential to exceed (RPE) a water quality-based effluent limitation (WQBEL) and an antidegradation review is required.
2. De minimis consideration for an OSRW or an EUW is the WQBEL calculated without dilution or the default technology-based effluent limitation (DTBEL).
3. The default mixing zone used to calculate a WQBEL outside of the Great Lakes Basin is 50% of the stream design flow and, within the GL Basin, the default mixing zone is 25% of the stream design flow.
4. How to set the cumulative cap is still up for debate.
5. A zero flow stream has no unused loading capacity.
6. The representative background concentration is established upstream of a discharge and represents all weather conditions and average, high, and low flow conditions, not just the $Q_{7\ 10}$ low flow used as the stream design flow to calculate WQBELs and the limits based on the de minimis. Monitoring data up to seven years old can be used for determining representative background.
7. WQBELs don't apply to streams when the flow is less than the $Q_{7\ 10}$ flow.
8. A discharger may either accept the effluent limits based on the de minimis as the limits in the permit or, if the discharger wants a limit greater than the limits based on the de minimis, then an antidegradation demonstration is required.
9. The limits based on the de minimis lowering of water quality, that allocates 10% of the unused loading capacity to the new or increased discharge, is equivalent to the WQBEL calculated using a mixing zone equal to 10% of the stream's design flow.
10. The preliminary effluent limits used in the RPE analysis, which is the WQBEL calculated using a mixing zone equal to 25% or 50% of the stream design flow, is equivalent to the limit that allocates 25% to 50% of the unused loading capacity to the new or increased discharge.

Other discussion issues surrounding the examples presentation:

- When questioned about the use of a DTBEL for a municipal discharger's ammonia limit, Steve said IDEM is trying to develop a DTBEL for dischargers of ammonia based on the lake discharger rule which is representative of the treatment level that a sanitary wastewater treatment facility should be able to achieve.
- The development of WQBELs was questioned as a waste of time if they aren't being used. IDEM/Denny Clark explained the different objectives in employing WQBELs versus antidegradation as the difference between establishing a protective level to protect human health and aquatic life versus a level that minimizes the impacts to the receiving stream.
- Martha and Steve reminded the group that DTBELs are calculated per discharger type and are a level known that the discharger can meet. Kari Evans objected to applying DTBELs to all circumstances saying she has seen an expanded application of DTBELs. Bruno Pigott responded saying the point is that if the discharger can't meet

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the DTBEL and the discharge doesn't meet one of the rule's listed exemptions, then the discharger can do the antidegradation demonstration.

- The current monitoring points that IDEM uses to establish representative background concentrations may need to be enhanced with information on background concentration provided by the discharger.
- Several stakeholders requested a list of the proposed DTBELs and the basis for those limits. IDEM agreed to provide the stakeholders with the proposed DTBELs and the basis for those limits.

NEXT STEPS

The post lunch break discussion was to determine the process of establishing the small workgroup and the meeting topics.

- Open discussion on how to proceed moderated by Martha Clark Mettler
 - Ideas for smaller groups:
 - Breaking into smaller groups such as regulated community and environmental community to meet every few weeks. Perhaps have municipalities as a third group.
 - Break into groups by topic such as public participation, exemptions, assimilative capacity, reasonable potential, others, or following the sections of the rule.
 - Listing of topics requiring additional discussion:
 - De minimis
 - Reasonable Potential to Exceed
 - Pollutants of concern
 - DTBEL
 - BCC
 - Tier II criterion
 - Exemptions other than de minimis
 - Water quality improvement projects
 - Antidegradation demonstration
 - Treatment alternatives
 - Public notice/public comment
 - Cumulative cap
 - Tributary to OSRW
 - Trigger
 - Discussion of grouping and/or prioritizing topics. After a vote, in order of descending priority for order of discussion, the topics are:
 - Trigger/applicability
 - Exemptions
 - De minimis
 - Water quality improvement
 - Antidegradation demonstration
 - Public notice/public comment
 - After an opportunity for the stakeholder groups to caucus, the small group representatives are:
 - Municipals: Brett Barber, Dan Olsen, David Bates, Lori Gates

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- Industrials: Doug Bley, Neil Parke, Kari Evans, Tim Lohner/Denny Wene
 - Environmentalists: Albert Ettinger, Jeff Hyman, Rae Schnapp, Bowden Quinn, Charlotte Read, Ann Alexander
 - Representing IDEM will be: Martha Clark Mettler, Steve Roush, MaryAnn Stevens, and John Nixon
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- Goal of the small workgroup is to work through all the topics in the next few months. Notes will be taken and distributed to the group in advance of the subsequent meeting. It was mentioned that this is an aggressive schedule and might curtail the small group representatives being able to go back to their larger groups to convey the results of the small group meeting.
 - Commissioner Easterly noted that some new NPDES permits can not be issued until the antidegradation problem is resolved. He mentioned the US Steel permit where there is no new or increased discharge; yet, antidegradation is still an issue. He also mentioned that there is a legal requirement to apply antidegradation outside of the GL Basin but there isn't an implementation process in place.
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- Discussion of logistics of upcoming meetings.
Next meeting proposed for July 15, 2008, 10:00 A.M. to 4 P.M., IDEM's Shadeland Offices.
Topics to be covered:
 - Trigger, RPE
 - Pollutants of Concern, BCC
 - Exemptions other than de minimis
 - Before the next meeting, what documents should be distributed:
 - How to determine a RPE (Steve's spreadsheet)
 - More background on Examples (they're based on real examples)
 - Where did the DTBELs come from in the Examples?
 - David Pfeifer, EPA, Region 5, stated that EPA was happy to participate in this process as many states are going through this process right now. The status of the other Region V states is:
 - Illinois has a rule that is more like a guideline for the antidegradation demonstration. The rule is very streamlined and doesn't have a de minimis. It operates like a sliding scale.
 - Indiana is underway with rulemaking.
 - Michigan has a policy that currently is more conceptual.
 - Minnesota is revising its policy.
 - Ohio has procedures in place that include a very detailed process.
 - Wisconsin is starting its rule revision.

Dave concluded by saying the rules that are most transparent are the most successful rules.

Mention was made of a law suit against the Illinois-issued NPDES permit to a Conoco Philips facility. Kari Evans stated the draft fact sheet on the permit contained minimal information which led to the law suit. Albert Ettinger said the problem with the Conoco Philips permit is that Illinois didn't follow its antidegradation rule and provided too little information to the public.